

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Darren S. Simmons,)	Civil Action No.: 5:13-644-RMG
)	
Plaintiff,)	
)	ORDER
vs.)	
)	
William R. Byars, Jr., Agency Director;)	
Thomas E. Bryne, MD, John B. McRee, MD;)	
Doctor Moore, MD; Janine Wresicics, RN;)	
Terry L. Andrews, RN; Ms. P. Derrick, RN;)	
Warden John M. Pate; A/W Newton, Major)	
Worrick; Ms. Cindy Sanders, Admin.)	
Assistance; John H. Carmichael, Jr.;)	
)	
Defendants.)	
)	

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that this Court deny Plaintiff’s motions for entry of default and for default judgment. (Dkt. No. 50). For the reasons set forth below, the Court adopts the R&R as modified below and denies Plaintiff’s motions. (Dkt. Nos. 47, 48).

Background

Plaintiff filed his original complaint in this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 on February 27, 2013. (Dkt. No. 1). Pursuant to the provisions of 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B) DSC, this matter was referred to a Magistrate Judge for all pretrial proceedings. On March 18, 2013, Plaintiff filed an amended complaint. (Dkt. No. 7). Plaintiff filed a motion for entry of default on May 24, 2013, and then filed a motion for default judgment on May 28, 2013. (Dkt. Nos. 47, 48). On May 29, 2013, the Magistrate Judge issued an R&R recommending the Court deny Plaintiff’s motions. (Dkt. No. 50).

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Discussion

After review of the record, the Court adopts the R&R as modified herein. (Dkt. No. 50). Rule 55(a) of the Federal Rules of Civil Procedure provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). In this case, the Magistrate Judge authorized service of process and a summons was issued on April 30, 2013, (Dkt. Nos. 27, 31) but the record shows that Defendants were actually served on May 21, 2013 (Dkt. Nos. 55-65). Defendants then filed a timely answer on May 30, 2013, after the issuance of the R&R on May 29, 2013. (Dkt. No. 52). Thus, Defendants are not in default.

Conclusion

Based on the reasoning set forth above, the Court adopts the R&R as modified (Dkt. No. 50) and DENIES Plaintiff’s motions for entry of default and for default judgment. (Dkt. Nos. 47, 48).

AND IT IS SO ORDERED.

A handwritten signature in black ink, consisting of a stylized 'R' followed by a cursive 'M' and 'G'.

Richard Mark Gergel
United States District Court Judge

June 18, 2013
Charleston, South Carolina